

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 2666
(JNE/FLN)

This Document Relates to All Actions

PLAINTIFFS SUBMISSION
REGARDING BELLWETHER
TRIAL CANDIDATES

Pursuant to Pretrial Order No. 17, as amended by the Court's Minute Entry dated January 19, 2017, Plaintiffs submit this list of Bellwether Trial Candidates.

Each of these cases involves a Plaintiff who underwent a hip or knee replacement procedure, and therefore falls within the categories designated by this Court.

Plaintiffs and Defendants have agreed on a procedure to nominate cases to this Court for bellwether trial consideration. First, the parties have agreed that the two mutually nominated cases are to be included in the final list of eight. Those cases are:

- 1. *Julie Kamke v. 3M Company, et. al.***
D.Minn. Case No. 16-cv-01225
Plaintiff's Counsel: Peterson & Associates, P.C.
- 2. *Kevin Walker v. 3M Company et. al.,***
Ramsey County Case No. 62-cv-16-1257
Plaintiff's Counsel: Meshbeshier & Spence, Ltd.

Next, while the parties have not reached agreement on the remaining six cases for bellwether consideration, the parties did reach agreement that each side will submit a list of three cases to round out the eight for the Final Bellwether Pool. There is no agreement that any case nominated by the other side is, by virtue of the nomination, representative of the cases pending in this MDL. Instead, to the extent the parties believe one or more of the nominated cases isn't representative, the parties will submit letter briefing on the issue of representativeness no later than May 18, 2017, pursuant to the Court's scheduling order.

Plaintiffs' three nominations are:

**3. *Louis Gareis v. 3M Company, et al.*,
D.Minn. Case No. 0:16-cv-04187
Plaintiff's Counsel: Kennedy Hodges**

Mr. Louis Gareis is a 75 year-old resident of Cayce, South Carolina who underwent a right total hip arthroplasty due to degenerative joint disease at Providence Orthopedic Hospital in Columbia, South Carolina on November 9, 2010, at the age of 68 years old. Mr. Gareis developed a Staphylococcus infection originating at his hip joint soon after which led to his hip implant being removed and an antibiotic spacer installed on August 16, 2011. His right hip implant was reinstalled on September 5, 2012, after more than a year of having restricted movement due to only having an antibiotic spacer installed in place of his hip.

Plaintiffs believe this case is an appropriate bellwether trial selection in this MDL because it presents several of the major variables common to many other

filed cases, including but not limited to: (1) age typical of other plaintiffs in this litigation; (2) orthopedic device implantation surgery (namely, a Total Hip Arthroplasty (“THA”)); (3) medical records confirm exposure to the Bair Hugger patient warming device during the subject surgery; (4) diagnosis of infection made within reasonable temporal proximity to the subject surgery; and (5) injuries and damages typical of a significant number of plaintiffs in this litigation, including additional hospitalizations and a multi-stage revision surgery.

**4. *John Nugier v. 3M Company, et al.*,
D.Minn. Case No. 0:16-cv-04246
Plaintiff’s Counsel: Kennedy Hodges**

Mr. John Nugier is a 67 year-old resident of Orlando, Florida who underwent a right total knee arthroplasty due to degenerative joint disease at the Miami Veterans Administration Hospital in Miami, Florida on March 7, 2012, at 61 years of age. Mr. Nugier developed a MRSA infection originating at his knee joint soon after, which led to his knee implant being removed and an antibiotic spacer installed on July 23, 2012. His right knee implant was reinstalled on October 18, 2012, after having a spacer installed for nearly three months.

Plaintiffs believe this case is an appropriate bellwether trial selection in this MDL because it presents several of the major variables common to many other filed cases, including but not limited to: (1) age typical of other plaintiffs in this litigation; (2) orthopedic device implantation surgery (namely, a Total Knee Arthroplasty (“TKA”)); (3) medical records confirm exposure to the Bair Hugger

patient warming device during the subject surgery; (4) diagnosis of infection made within reasonable temporal proximity to the subject surgery; and (5) injuries and damages typical of a significant number of plaintiffs in this litigation, including additional hospitalizations and a multi-stage revision surgery.

**5. *Gerardus Vandermade v. 3M Company, et al.*,
D.Minn. Case No. 0:16-cv-04221
Plaintiff's Counsel: Levin Papantonio**

Mr. Gerardus Vandermade is a 79 year-old resident of Apopka, Florida who underwent a right total hip arthroplasty due to degenerative joint disease at Florida Hospital Orlando in Orlando, Florida on June 6, 2013, at 76 years of age. Mr. Vandermade developed a Staphylococcus infection originating at his hip joint soon after which led to an exchange of the femoral head and liner, multiple irrigation and debridement procedures, removal of his hip implant and installation of an antibiotic spacer on July 25, 2013, and the eventual reinstallation of a right hip implant on September 12, 2013.

Plaintiffs believe this case is an appropriate bellwether trial selection in this MDL because it presents several of the major variables common to many other filed cases, including but not limited to: (1) age typical of other plaintiffs in this litigation; (2) orthopedic device implantation surgery (namely, a Total Hip Arthroplasty ("THA")); (3) medical records confirm exposure to the Bair Hugger patient warming device during the subject surgery; (4) diagnosis of infection made within reasonable temporal proximity to the subject surgery; and (5) injuries and

damages typical of a significant number of plaintiffs in this litigation, including additional hospitalizations and a multi-stage revision surgery.

Respectfully submitted,

Dated: May 10, 2017

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